

DISTRICT OF COLUMBIA DEPARTMENT OF TRANSPORTATION

NOTICE OF PROPOSED RULEMAKING

The Director of the District of Columbia Department of Transportation, pursuant to the authority of section 3(b) of Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code § 50-921); the Urban Forest Preservation Act of 2002, effective June 12, 2003 (D.C. Law 14-309; D.C. Official Code 8-6501.01 *et seq.* (the act)); Mayor's Order 2003-11, January 16, 2003, and Mayor's Order 2003-173, December 1, 2003), hereby gives notice of the intent to amend the Public Space and Safety Regulations (24 DCMR) by adding a new Chapter 37, Special Trees. This chapter implements the act, which established an urban forest preservation program requiring a Special Tree Removal Permit prior to the removal of a tree with a circumference of 55 inches or more. Although the next available chapter in Title 24 would have been chapter 35, the Department wishes to reserve chapters 35 and 36 in the event that additional excavation related rules are needed. Final rulemaking action to adopt these amendments shall be taken in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, but not until the Council adopts a resolution approving these rules as required by section 103 (b) of the act (D.C. Official Code 8-6501.03 (b)).

TITLE 24, DCMR, Public Space and Safety, is amended by adding a new Chapter 37 to read as follows:

Chapter 37 SPECIAL TREES

3700 SPECIAL TREE REMOVAL PERMIT

- 3700.1 No person or non-governmental entity shall remove a Special Tree, other than a Hazardous Tree, without a Special Tree Removal Permit issued by the Urban Forestry Administration, as provided in the Urban Forest Preservation Act of 2002, effective June 12, 2003 (D.C. Law 14-309; D.C. Official Code 8-6501.01 *et seq.*) (“the act”).
- 3700.2 Any person removing a Hazardous Tree without a Special Tree Removal Permit shall submit to the Urban Forestry Administration, at least 15 business after removal, a certification by an International Society of Arboriculture certified arborist that the tree was a Hazardous Tree.

3701 PERMIT APPLICATION PROCEDURES

- 3701.1 A permit application shall be signed by the applicant and submitted on the form provided by the Urban Forestry Administration. The application must be submitted at least fifteen (15) business days prior to the day tree removal is desired.
- 3701.2 As part of the application, the applicant must agree to permit an Arborist from the Urban Forestry Administration to inspect the site of the proposed removal. The

inspection shall occur during the Administration's normal business hours and prior to permit issuance.

3701.3 If an International Society of Arboriculture certified arborist or an Urban Forestry Administration arborist determines that the tree to be removed is a Hazardous Tree or is a species that has been identified under § 3701.6 as appropriate for removal, a Special Tree Removal Permit shall be issued.

3701.4 If an International Society of Arboriculture certified arborist or an Urban Forestry Administration arborist determines that the tree to be removed is not a Hazardous Tree and is not a species identified under § 3701.6 as appropriate for removal, or if the applicant stipulates as to both on the permit application, no Special Tree Removal Permit may be issued until the Applicant:

- (a) Pays into the Tree Fund a tree replacement fee equivalent to thirty-five dollars (\$35) per inch of circumference of each special tree that is to be removed;
- (b) Avers on its Special Tree removal application to plant, on the same lot and in accordance with § 3702, a quantity of saplings whose aggregated circumference, when fully grown, will equal or exceed the circumference of the Special Tree(s) to be removed; or
- (c) A combination of a) and b) so as to account for the circumference of the tree removed.

3701.5 The Special Tree Removal Permit shall be valid for sixty (60) calendar days after its issuance.

3701.6 Tree species appropriate for removal are:

- (a) *Ailanthus altissima* (common name-Ailanthus);
- (b) *Morus* species (common name-Mulberry); and
- (c) *Acer platanoides* (common name-Norway maple).

3702 PERMIT CONDITIONS FOR TREE REPLACEMENT

3702.1 A Special Tree Removal Permit issued to a Permittee electing to plant replacement trees pursuant to § 3701.4 (b) shall contains the following conditions:

- (a) Replacement trees shall, when planted, have a minimum caliper size of two (2) inches;
- (b) The replacement trees shall be properly planted;

- (c) The replacement trees shall be planted only during the planting season (October 15 to May 1), except that planting must be completed no later than six (6) months after tree removal, unless construction activity makes tree replacement infeasible, in which case planting shall be completed no later than six (6) months after construction is finished;
- (d) For a twelve month period after planting, the permittee shall water, mulch, and, when appropriate, remove from the tree any tree protection stakes and guy wires;
- (e) Not later than thirty (30) days after the replacement trees are planted, the permittee shall mail or hand deliver to the Urban Forestry Administration a certification, signed by the applicant, attesting to the successful planting of the replacement trees; and
- (f) The permittee shall grant an inspector of the Urban Forestry Administration reasonable access to the property that is the subject of the Special Tree Removal Permit.

3703 ENFORCEMENT AND ADJUDICATION

3703.1 Notices of Infractions for violations of the act, this chapter, or any condition of a Special Tree Removal Permit shall be issued, answered and adjudicated pursuant to the Department of Consumer and Regulatory Affairs Civil Infraction Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.06 *et seq.*) and the provisions of Chapter 31 of Title 16 of the District of Columbia Municipal Regulations.

3704 SCHEDULE OF FINES

3704.1 Any person who violates any provision of the act, this chapter, or any condition of a Special Tree Removal Permit shall be subject to a civil infraction fine of \$100 per inch of circumference of the tree or trees in question.

3702 PUBLIC UTILITIES

3702.1 Public utility companies regulated by the Public Service Commission may remove Special Trees in connection with utility construction, line maintenance, and emergency work within the District's right-of-way without a Special Tree Removal Permit. Such companies shall comply with the notice requirement set forth in section 105 (b) of the act, D.C. Official Code § 6-651-05 (b).

3799 DEFINITIONS

3799.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed below:

Caliper – the linear distance around the trunk of a tree when measured at a height of six inches above the ground/soil.

Circumference – the linear distance around the trunk of a tree when measured at a height of 4 ½ feet above the ground.

District's right-of-way – all the publicly owned property between the property line on a street, park, or other public property as such property lines are shown on the records of the District, and includes any roadway, tree space, sidewalk, or parking between such property lines.

Hazardous Tree – a tree that should be removed because it is:

- (a) Structurally defective, diseased, dying, or dead;
- (b) Posing a high risk of failure or fracture with the potential to cause injury to people or damage to property: or
- (c) Causing damage to property or structures that cannot be mitigated in any manner other than removal of the tree.

Person or non-governmental entity - any individual, corporation, firm, agency, association, organization, or utility company.

Special Tree – a tree within the District of Columbia that has a minimum circumference of 55 inches at 4 ½ feet above the ground.

Tree Fund – the fund established under section 107 of the Urban Forest Preservation Act of 2002, effective June 12, 2003 (D.C. Law 14-309; D.C. Official Code 8-6501.07).

All persons interested in commenting on the subject matter in this proposed rulemaking action may file comments in writing, not later than thirty (30) days after the publication of this notice in the D.C. Register, with Mariclaire McCartan, Urban Forestry Administration, Department of Transportation, 4901 Shepherd Parkway, SW, Washington, D.C. 20032. Copies of this proposal are available, at cost, by writing to the above address.